INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement of facts	2
Argument	3
Conclusion	6

Table of Authorities Cited

Cases	Page
Pennsylvania v. Mong, 160 Ohio St. 455, 117 N.E.2d 32	5

Codes

California Code of Civil Procedure:	
Sections 1650-1690	2
Section 1690	4

Constitutions

United States Constitution, Fourteenth Amendment	2

Statutes

Uniform Reciprocal Enforcement of Support Act (9C U.L.A.):	
Sections 1-33	2
Section 28	4
Page 9	5

Texts

Ehrenzweig, Interstate Recognition of Support Duties, 43 Cal. L. Rev. 382, 387 (1954)	5

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1958

No. 374

FRANCIS L. HARMON,
Petitioner,
vs.
RUTH ELIZABETH HARMON,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

to the District Court of Appeal of the State of California, Second Appellate District, Division Three.

OPINIONS BELOW.

The opinion of the District Court of Appeal is reported at 160 A.C.A. 49, 324 P.2d 901. The Supreme Court of California did not file an opinion when it denied petitioner's application for a hearing.

JURISDICTION.

The federal questions sought to be presented were urged before the lower courts as set out in the Petition.

QUESTIONS PRESENTED.

Whether those portions of the Uniform Reciprocal Enforcement of Support Act, adopted in all American jurisdictions, relating to jurisdiction, choice of law, and naming of parties violate the rights of persons protected by the Fourteenth Amendment; and whether the Act was applied to petitioner in an unconstitutional manner.

STATUTE INVOLVED.

Sections 1650-1690 of the California Code of Civil Procedure (the Uniform Reciprocal Enforcement of Support Act, 9C U.L.A. §§ 1-33).

STATEMENT OF FACTS.

This is a typical proceeding under the Uniform Reciprocal Enforcement of Support Act, now adopted in all the states, Alaska, Hawaii, and Puerto Rico. The action began in a Virginia trial court when the respondent, Ruth Elizabeth Harmon, filed a petition stating that she was the divorced wife of petitioner Francis L. Harmon; that she was a resident of Virginia; that the sole child of the marriage, Pauline

E. Harmon, was a minor under her care; that Francis owed the child a duty support; and that Francis was then located in Los Angeles, California. The trial judge in Virginia certified that the petition set forth facts from which it might be determined that Francis owed a duty of support and transmitted the documents to the Superior Court in Los Angeles.

The Superior Court of Los Angeles County issued an order to show cause, and the petitioner, Francis, appeared. Two hearings were held. The court found that Francis owed a duty of support to his child and determined that a reasonable sum would be $30.00 each month. Francis moved to quash the summons on the ground that the Uniform Reciprocal Enforcement of Support Act was in various particulars unconstitutional. This motion was denied. Francis also sought an order of the Los Angeles Court giving him visitation privileges with the child. This motion was denied without prejudice. The District Court of Appeal sustained the trial court's rulings.

ARGUMENT.

Petitioner's contentions are largely wide of the mark because he confuses the father's duty of support with the parent's right to custody of the child. The two are wholly separate; quite regardless of custody, the father owes a duty of support to his children. This case concerns only the obligation of support. The respondent sought no more than the enforcement

of that obligation, and the Uniform Act makes the duty of support the sole issue which can be litigated in proceedings under the Act.

Thus petitioner's questions numbers 1, 2, 3, and 5 are simply not in the case. There has been no determination that respondent, Ruth, had "legal custody" of the child: All the court found was that the child was then in fact in the care of her mother. If the petitioner wishes to litigate the question of custody (which was not determined in the divorce proceedings), he may do so by bringing an action in Virginia where the wife and child are residents. The Uniform Act provides that he may not litigate the issue of custody or anything other than support in a support action. Section 28 of the Uniform Act provides:

> "Participation in any proceedings under this act shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding." Cal. C.C.P. § 1690.

The reason for this provision is obvious. If the person owing the duty of support were able to complicate the litigation by introducing other irrelevant disputes, the objective of the statute to provide an expeditious remedy for support would be frustrated. Furthermore, suit in the jurisdiction of the obligor would generally be most inappropriate. A large percentage of persons seeking support payments under this act are destitute and would be unable to appear in a distant jurisdiction to defend themselves either by counsel or even by appearing as witnesses. Thus, it was entirely consistent with the scheme of the Uni-

form Act for the California court to refuse to decide which parent should have custody of the child, or to determine whether the petitioner, Francis, should have visitation privileges. Quite apart from whether that was a correct construction of the statute, it is plain that there can be nothing unconstitutional in a court limiting the case before it to the precise issue of whether the father owed a duty of support and, if so, the amount which he could reasonably be expected to pay.

Petitioner urges that the choice-of-law provisions of the Uniform Act are arbitrary and unreasonable and hence violative of due process. But in this case there is no choice-of-law problem.[1] Virginia and California (and every other state in the union) impose a duty of support on the father to his children of Pauline's age. See table, 9C U.L.A. p. 9. There being no divergence in the law of the respective jurisdictions, there can be no constitutional problem of an inappropriate choice of law.

The question as to whether the "real party in interest" must be named as a party to the litigation is a matter of state practice presenting no federal question.

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[1] *Pennsylvania v. Mong*, 160 Ohio St. 455, 117 N.E.2d 32, relied upon by the petitioner (br. p. 14), illustrates the difference. Under Pennsylvania law a child owed a duty of support to his father even though it was shown that the father had deserted the child in infancy. Ohio law did not impose a duty on the child in those circumstances. In a suit in Ohio for the benefit of a father in Pennsylvania who had deserted his child, the Ohio court held that it would not enforce the obligation. The language of equal protection was unnecessary and inappropriate; consult Ehrenzweig, Interstate Recognition of Support Duties, 43 Cal. L. Rev. 382, 387 (1954).

The statute does not define the duty of support; it simply provides for the enforcement of the obligation. There is nothing vague or unclear in the statute's reference to "duty of support"; it is simply an incorporation by reference of the applicable law.

The decision below is clearly correct, there is no conflict of decisions, and no important issue of federal law is presented.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for certiorari should be denied.

Dated, San Francisco, California,
September 29, 1958.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General of the State of California

CLARENCE A. LINN,
Chief Assistant Attorney General of the State of California

Attorneys for Respondent.